IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 12TH JANUARY 2007 / 22ND PAUSHA 1928

Crl.MC.No. 4053 of 2006()

AGAINST THE ORDER DATED 02/11/2006 IN CRMP 1894/06 IN CC.510/2005 of THE JUDICIAL FIRST CLASS MAGISTRATE COURT NO.1, PERINTALMANNA

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PETITIONER: ACCUSED

K.P.SOUDAMINI,
W/O.B ALAKRISHNAN,
KALAPPARA HOUSE, PATTIKKAD.P.O

BY ADV. SRI.DILIP MOHAN

RESPONDENTS:STATE AND DEFACTO COMPLAINANT

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1. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

2. P.V.RAMDAS, S/O.LATE NARAYANAN EZHUTHAASSAN, AARADHANA, KAKKOTH, PERINTHALMANNA.P.O.

BY ADV. SRI.K.M.SATHYANATHA MENON
PUBLIC PROSECUTOR SRI.K.A.AKBAR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 12/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.NO.4053 OF 2006

Dated this the 12th day of January, 2007.

ORDER

The petitioner faces indictment in a prosecution under Section 138 of the N.I Act. Signature in the cheque is not disputed. In the reply notice, a contentions is raised that the blank signed cheques were obtained as security and the payee's name is entered in such blank cheques by the complainant and false claim has been staked on the basis of such forgery.

2. In the complaint nothing is mentioned about the person who has made the entries in the cheque. The affidavit in chief was filed under Section 145 of the N.I Act. In that, it was specifically asserted by the complainant that all the entries were made by the counsel for the accused who was continuing to appear for him in the present prosecution. That assertion is not seen specifically challenged in the course of cross examination. Of course in the cross examination also, the liability is disputed.

3. The complainant in these circumstances did not want to leave anything to chance. He filed an application that the advocate of the accused in whose hand the details in the cheque are filled may be examined as a witness on the side of the

complainant. This application was opposed by the petitioner/accused. After considering the objections, the learned Magistrate proceeded to pass the impugned order. It was directed that the advocate be examined as a witness on the side of the complainant.

4. The petitioner claims to be aggrieved by the impugned order. What is the grievance ? The learned counsel for the petitioner submits that the fact that the entries in the cheque are made by the counsel for the petitioner is not disputed during the cross examination of the complainant and in these circumstances it is superfluous and unnecessary to direct examination of the advocate of the petitioner as a witness of the complainant. In these circumstances it is prayed that the impugned order may be set aside.

5. I am informed that the advocate is continuing to appear for the petitioner even now. To say the least, I am shocked to hear that. Ethics of the noble profession must inform the counsel that it is not proper for me to continue in such a cause. Be that as it may, I accept the unambiguous submission made by the counsel for the petitioner that the petitioner has no dispute that the petitioner's counsel had made the entries in the

cheque in which her signature admittedly appears. In view that unambiguous statement made at the Bar, I conclude and the learned counsel for the respondent agrees with me that it is not any more necessary to examine the counsel for the petitioner as a witness of the complainant. If such an unambiguous statement were not there, I would certainly have not interfered with the impugned order.

6. This Crl.M.C is, in these circumstances, dismissed accepting the submissions/stipulations made by the learned counsel for the petitioner. In fact, the cross examination of the complainant has been read to me. I do also note that the specific assertion on oath made by the complainant that the entries in the cheque which admittedly appears the signature of the petitioner are made by the petitioner's counsel is not disputed or challenged.

R.BASANT
JUDGE

rtr/